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**MAR 13 2001**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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March 13, 2001

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: REPLY TO OPPOSITION TO PETITION FOR RULEMAKING  
Amendment of Section 73.606(b), Table of Allotments  
TV Broadcast Stations (Richmond, Virginia)  
(Petition for Rulemaking Submitted July 17, 2000)**

Dear Ms. Salas:

Transmitted herewith on behalf of Television Capital Corporation of Richmond is an original and four copies of its Reply to the January 25, 2001 Opposition to Petition for Rulemaking filed by Community Television Educators in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office directly.

Sincerely,

  
Vincent A. Pepper

Enclosures

File in Encls rec'd  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

Amendment of Section 73.606(b),  
Table of Allotments,  
TV Broadcast Stations  
(Richmond, Virginia)

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MM Docket No. \_\_\_\_\_  
RM- \_\_\_\_\_

**REPLY TO OPPOSITION TO PETITION FOR RULEMAKING**

Television Capital Corporation of Richmond ("TCCR"), the petitioner in the above-referenced rulemaking proceeding and an applicant for a construction permit for a new TV broadcast station on Channel 63 at Richmond, Virginia (FCC File No. BPCT-19960920WI)("Richmond Application"), by its attorneys, hereby replies to the Opposition to Petition for Rulemaking filed by Community Television Educators ("CTE") on January 25, 2001 ("Opposition")(copy attached). Because CTE's Opposition is wholly without merit, the Commission should disregard the Opposition and promptly institute a rulemaking proceeding toward reallocting Channel 52 from Courtland, Virginia to Richmond, Virginia and permitting TCCR to amend its Richmond Application to specify operation on Channel 52 in lieu of the originally applied-for Channel 63. In support whereof, the following is respectfully submitted for the Commission's consideration:

1. In its Opposition, CTE requests the Commission to hold off on instituting a rulemaking proceeding toward the realloiment of Channel 52 from Courtland, Virginia to Richmond, Virginia (as requested by TCCR in its Petition for Rule Making in the instant proceeding) until the Commission rules on a waiver request filed by CTE, which seeks acceptance of CTE's late-

filed application for a new noncommercial TV broadcast station on Channel 52 at Courtland, Virginia (FCC File No. BNPET-19960923ABC, according to CTE)("CTE's Application"). According to CTE, CTE's Application was filed late due to "a problem with delivery by Federal Express, which missed the filing deadline by five (5) minutes." Opposition, at page 2.

2. The applicable filing deadline for CTE's Application was set by the Commission in *In re Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Services, Sixth Further Notice of Proposed Rule Making*, FCC 96-317, MM Docket No. 87-268, 11 FCC Rcd 10968 (1996)("FNPRM"). In connection with the Commission's efforts to eliminate existing vacant NTSC allotments toward the development of the DTV Table of Allotments, the Commission announced in the FNPRM that it would not accept any applications for new NTSC TV stations (for then-existing vacant allotments) that are filed after 30 days from the publication of the FNPRM in the Federal Register. *Id.* at para. 60. The FNPRM was published in the Federal Register on August 21, 1996. 61 Fed. Reg. 43209 (August 21, 1996). Thus, September 20, 1996 was set as the deadline for filing new NTSC TV station applications such as CTE's Application.

3. Although September 20, 1996 was the filing deadline, CTE's Application was filed late on September 23, 1996, ostensibly due to "a problem with delivery by Federal Express, which missed the filing deadline by five (5) minutes." Opposition, at page 2. As such, CTE apparently filed a request with the Commission seeking a waiver of the filing deadline. Opposition, at page 1. Unfortunately for CTE, however, a request for waiver of a filing deadline based on the excuse that CTE relied on a delivery service (Federal Express) to timely file its application has long been held by the Commission as insufficient. *See Caldwell Television Associations, Ltd.*, 94

FCC 2d 69, *recon. denied*, FCC 83-462 (1983); FCC Overrules Caldwell Television Associates, Ltd., *Public Notice*, FCC 85-534, 58 RR 2d 1706 (1984)("Public Notice").

4. Specifically, in a public notice released by the Commission on October 4, 1984, the Commission clearly enunciated that henceforth it would "adhere strictly to the standard that applicants seeking waiver of Commission application filing deadlines demonstrate unusual or compelling circumstances for their waiver requests." 58 RR 2d 1706. The Commission elaborated that the standard generally contemplates "a showing that the untimely filing was caused by a calamity of a widespread nature that even the best of planning could not have avoided." *Id.* Requests for waivers based on claims that copying machines, delivery services, inclement weather, or illness was responsible for the late filing would not be considered as unusual or compelling. *Id.* The Commission explained that while such circumstances may be unexpected, they are foreseeable and thus permit applicants to plan for such unanticipated delays. The Commission unequivocally reiterated that " . . . applicants who wait until the eleventh hour to meet Commission deadlines will be held to assume the risk for almost all events which may occur to prevent timely filing." *Id.* at page 1707; see *Kennebec Valley Television Inc.*, 3 FCC Rcd 4522, at para 15 (1988)(reliance on guarantee of next-day delivery does not excuse an untimely filing).

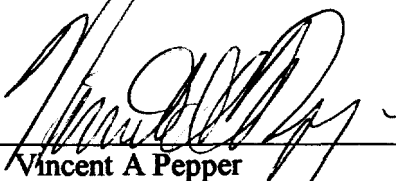
5. Based on long held precedent, CTE's request for waiver of the filing deadline for CTE's Application is clearly without any merit. The Commission clearly agrees with this analysis since there is no record of the filing of CTE's Application or its waiver request. In fact, CTE's Application does not exist at all in the Commission's CDBS Public Access database. CTE's Opposition is therefore without any merit.

WHEREFORE, for the foregoing reasons, the Commission should promptly institute a rule making proceeding toward reallocoting Channel 52 from Courtland, Virginia to Richmond, Virginia and permitting Television Capital Corporation of Richmond to amend its pending application for a construction permit for a new TV broadcast station to specify operation on Channel 52 in lieu of the originally applied-for Channel 63 (FCC File No. BPCT-19960920WI).

Respectfully Submitted:

**TELEVISION CAPITAL CORPORATION  
OF RICHMOND**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Vincent A. Pepper', is written over a horizontal line.

Vincent A. Pepper  
Patricia M. Chuh  
Its Attorneys

Pepper & Corazzini, L.L.P.  
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March 13, 2001

## **CERTIFICATE OF SERVICE**

I, Lisa A. Skoritoski, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that on this 13th day of March, 2001, copies of the foregoing "Reply to Opposition to Petition for Rulemaking" were mailed, postage prepaid, to the following:

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\_\_\_\_\_  
Lisa A. Skoritoski